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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. KEENON ANTHONY JOSEPH SHUFFORD, Defendant and Appellant.	G046103 (Super. Ct. No. 10NF2232) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Richard W. Stanford, Jr., Judge. Affirmed.

William D. Farber, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

* * *

Appellant Keenon Anthony Joseph Shufford was convicted by a jury of a series of crimes stemming from two parking lot auto burglaries. The jury found him guilty of two counts of auto burglary (Pen. Code, §§ 459/460), aggravated assault on a peace officer (Pen. Code, § 245, subd. (c)) and evading a peace officer with wanton and wilful disregard for the safety of others (Veh. Code, § 2800.2). He was sentenced to the aggravated term of five years for the assault, and consecutive eight-month terms for the other crimes brought his sentence to seven years.

We appointed counsel to represent Shufford on appeal. While not arguing against appellant he filed a brief which fully set forth the facts of the case and advised us he was unable to find an issue to argue on appellant's behalf. His brief reflected a careful review of the record and consideration of possible arguments, but concluded none of those arguments had any chance of success.

We informed appellant he had 30 days to file written argument in his own behalf, and he did so. We have reviewed the record of appellant's trial and the briefs filed by appellant and his counsel, and find ourselves in agreement with his appellate counsel: There is no arguable error in the proceedings against appellant. (*People v. Wende* (1979) 25 Cal.3d 436.)

FACTS

Buena Park police followed Shufford and another male as Shufford drove their van up and down the aisles of parking lots at a Target store and then Knotts Berry Farm. Finally the car stopped – its engine running – near a Cadillac Escalade in the Knotts Berry Farm lot. The passenger got out with gloves or white socks on his hands, and twice entered and exited the Escalade. The police could not see if he took anything from the Escalade.

The car then proceeded down another aisle of the Knotts Berry Farm lot and stopped – again with its engine running – behind another Escalade. This time the

driver, later identified as Shufford, got out of the van and opened the rear cargo door of the Escalade. He removed two rear passenger seats and put them into his van.

Police ordered the driver to stop but he refused and drove away. When other officers tried to stop the van, Shufford drove it right at one of them, who dove out of the way (the basis of the aggravated assault on a peace officer charge). A high-speed pursuit followed. Eventually, Shufford crashed the van into other vehicles, leaped out and fled. Both he and his passenger were captured later, not far from where they had abandoned the van.

Several witnesses identified Shufford as the driver of the van. The car seats and other stolen property were recovered from the van, and a wealth of circumstantial evidence connected him to the crime. Although Shufford's passenger gave conflicting stories about whether he was the driver or the passenger, Shufford was convicted of the aggravated assault.

DISCUSSION

We have carefully scrutinized the trial record. The search and arrest are, of course, unassailable. Shufford had been observed actually committing an auto burglary before any attempt was made to stop and arrest him. There is no room for argument on the search and seizure points often associated with a criminal case.

The trial itself was unremarkable. There were no unusual disputes over the admissibility of evidence or argument of counsel, and the instructions seem both routine and unobjectionable. Appellate counsel wisely concluded there was no arguable sufficiency of the evidence issue. Defendant was observed by police officers to commit the crime and fled wildly when apprehended. While there was an argument he was not the driver of the van, and if he was, he did not actually try to hit the officer with the van, but merely drove inartfully in his haste, those arguments were rejected by the jury and we have no power to reweigh the facts that led them to their conclusions. Viewing the evidence in the light most favorable to the verdict, as we are required to do (*People v.*

Young (2005) 34 Cal.4th 1149, 1180), there was plenty here that was reasonable, credible, and of solid value to support a verdict beyond a reasonable doubt. (*People v. Johnson* (1980) 26 Cal.3d 557, 578.)

Shufford's own complaints are primarily directed at his contention he received ineffective assistance of counsel. He feels the blood stains on the door that supported the testimony he was the driver of the car rather than the passenger should have been tested for DNA to show they were his and not his passenger's. He admits he raised that issue with counsel only as trial was about to begin, but feels such testing would have undermined the assault charge by strengthening his argument he was not the passenger. He believes the testimony that he had no wounds that would have left blood behind was erroneous, and that his attorney should have done more investigation in that regard. He further complains that his attorney should have called his codefendant as a witness, to testify he was the driver and not appellant.

But these claims are not cognizable on direct appeal. We have no record that would allow us to evaluate his criticisms of counsel's trial preparation and strategy or appellant's statements that in fact he left blood at the crime scene. We cannot just take his word for that. These claims are therefore properly addressed by a petition for a writ of habeas corpus.

The same is true of Shufford's complaint that there were no African-Americans on his jury (Shufford is African-American). We would need more information than has been provided to us to show the make-up of the jury panel and to allow us to evaluate Shufford's trial counsel's tactics regarding jury selection. Again, this is not a matter that can be addressed on direct appeal employing this record.

Shufford also complains his attorney made an inadequate objection to evidence and once confused him with his codefendant and had to correct himself. This kind of de minimis complaint has never been the basis for a successful inadequacy of

counsel contention, and if they were counsel's only in-court lapses, he did a remarkable job, indeed.

Nor can we find any problem with the sentencing. At first glance, there seemed to be a possible Penal Code section 654 problem with sentencing Shufford for both his flight and the assault on the peace officer which was the opening gambit of that flight. But on closer examination, it became clear his foolhardy and wantonly dangerous driving *after* the assault was the basis of the felony evasion charge, so the sentencing was both legal and reasonable. Nor could we find any technical flaws in the sentencing. Appellate counsel also considered the appropriateness of the various fines, penalties, and assessments imposed upon appellant, as have we. He concluded, correctly, there was no error in them.

Shufford feels the sentencing was unduly harsh. He points out that the trial court rejected his request for probation, and, in doing so, called him a liar and said it would not believe anything he said. He is correct that the court's language was strong, but there was nothing about it that suggested any bias against appellant other than a disapproval of the criminal record he has accumulated and his commission of this offense *while on probation*. It would be hard to fault a court for refusing to grant probation to someone who had commited a series of felonies while enjoying his last probationary grant. While the court did "throw the book" at appellant, we cannot say his conduct while on probation did not merit strong language and strong action.

DISPOSITION

We have perused the record and can find no other suggestion of error. The judgment is affirmed.

BEDSWORTH, ACTING P. J.

WE CONCUR:

MOORE, J.

ARONSON, J.